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Pénale
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**International
Criminal
Court**

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TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**With Confidential, *EX PARTE* –Annexes A-C3 only available to the Prosecution
and VWU**

**Public redacted version of “Prosecution application for delayed disclosure”, 16
February 2015, ICC-01/04-02/06-461-Conf-Exp**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. As ordered by Trial Chamber VI (“Chamber”),¹ the Office of the Prosecutor (“Prosecution”) submits this application for the delayed disclosure of the identity and identifying information of the following 12 Prosecution witnesses: P-0758, P-0761, P-0773, P-0806, P-0887, P-0888, P-0898, P-0901, P-0907, P-0911, P-0914 and P-0918, for a limited time.

2. Witnesses P-0758,² P-0888 and P-0898³ are former UPC/FPLC child soldiers. P-0888 [REDACTED]; P-0898 is [REDACTED]. Witnesses P-0761, P-0773, P-0806, P-0887, P-0914 and P-0918 are [REDACTED]. Witnesses P-0901, P-0907⁴ and P-0911 are former UPC/FPLC military members, [REDACTED].

3. The request to delay disclosure is for a limited time and is necessary in order to complete security assessments and implement protective measures, where necessary, for these witnesses. [REDACTED].

4. The Prosecution requests the Chamber to authorise:

(i) delayed disclosure through the application of “non-standard” redactions to the witness statements and related materials of witnesses P-0758, P-0761, P-0773 and P-0806, who are [REDACTED]. Their statements were disclosed prior to the confirmation hearing with redactions to their identity. The Prosecution seeks to maintain these redactions until 16 March 2015, [REDACTED];

(ii) delayed disclosure through the application of “non-standard” redactions to the identity of witnesses P-0887, P-0888 and P-0898 in their witness statements and related materials [REDACTED] by 30 April 2015; and

(iii) delayed disclosure of the materials related to witnesses P-0901, P-0907, P-0911, P-0914 and P-0918 [REDACTED] by 30 April 2015 (“Request”).

¹ ICC-01/04-02/06-382-Corr, para.9(b), fn.15, p.9 (“Order”).

² P-0761, P-0773 and P-0806 are P-0758’s family members.

³ P-0914 and P-0918 are P-0898’s parents.

⁴ P-0887 is P-0907’s wife.

5. The delayed disclosure of the identity and identifying information of the 12 witnesses, as provided for in rule 81(4) of the Rules of Procedure and Evidence (“Rules”), constitutes an “appropriate measure” under article 68(1) of the Rome Statute (“Statute”). Delayed disclosure strikes the appropriate balance between the rights of the Accused and the need for the protection of victims and witnesses.⁵ The obligation to provide the names of Prosecution witnesses sufficiently in advance of trial to enable the adequate preparation of the Defence is subject to the need for the protection and privacy of victims and witnesses.⁶

Confidentiality

6. This application and its annexes are classified as “Confidential, *EX PARTE*, only available to the Prosecution and the VWU,” because they reveal the identity of Prosecution witnesses whose evidence has not yet been disclosed to the Accused, along with their current location and details of their security situation. Revealing this information would undermine the relief sought and create security risks to the individuals concerned. The Prosecution will file a redacted version of the application.

Procedural History

7. On 5 December 2013, following a request by the Prosecution,⁷ the Single Judge of Pre-Trial Chamber II (“the Single Judge”) authorised the non-disclosure of the identity and identifying information of witnesses P-0758, P-0761, P-0773 and P-0806.⁸ On 16 December 2013, the Prosecution disclosed the statements of these four witnesses⁹ to the Defence, redacted as authorised by the Single Judge.

⁵ Article 64(2) of the Statute.

⁶ Rule 76(1) and (4) of the Rules.

⁷ ICC-01/04-02/06-134-Conf-Exp.

⁸ ICC-01/04-02/06-165-Conf-Exp with confidential, redacted version at ICC-01/04-02/06-165-Red3; ICC-01/04-02/06-165-Conf-Exp-AnxII.

⁹ Respectively DRC-OTP-2058-0194, DRC-OTP-2054-8283, DRC-OTP-2057-0127, and DRC-OTP-2058-1087.

8. On 29 January 2014, the Single Judge authorised identity redactions¹⁰ to another document related to P-0761¹¹ which the Prosecution then disclosed with the authorised redactions on 31 January 2014.

9. On 9 October 2014, the Chamber set 31 January 2015 and 2 March 2015 as the deadlines for disclosure¹² and set 16 February 2015 as the deadline for any applications for delayed disclosure relating to Prosecution witnesses¹³ and requests for redactions.¹⁴

10. On 8 December 2014, the Chamber partially granted the Prosecution's request for measures pursuant to regulation 101(2) of the Regulations of the Court ("RoC").¹⁵

11. On 15 January 2015, the Prosecution provided the Chamber with, *inter alia*, a provisional list of witnesses¹⁶ and summaries of the expected testimony of these witnesses.¹⁷ The Prosecution simultaneously provided redacted versions of the provisional list of witnesses¹⁸ and the summaries¹⁹ in which it redacted the identity and information in relation to several witnesses. The Prosecution also indicated that there are a number of witnesses whom it is considering adding to its list of witnesses.²⁰

12. On 30 January and 6 February 2015, the Prosecution re-disclosed the statements and other material relevant to witnesses P-0758, P-0761, P-0773 and P-0806 to the Defence after having converted the redactions authorised by the Single Judge in accordance with the Redaction Protocol.²¹ The Prosecution also disclosed an

¹⁰ ICC-01/04-02/06-233-Conf-Exp-AnxII.

¹¹ DRC-OTP-2054-8290.

¹² Order, para.9(d).

¹³ Order, para.9(b).

¹⁴ Order, fn.15.

¹⁵ ICC-01/04-02/06-410-Conf-Exp, with confidential redacted version at ICC-01/04-02/06-410-Conf-Exp-Red ("8 December 2014 Decision").

¹⁶ ICC-01/04-02/06-426-Conf-Exp-AnxA.

¹⁷ ICC-01/04-02/06-426-Conf-Exp-AnxB.

¹⁸ ICC-01/04-02/06-426-Conf-AnxA-Red.

¹⁹ ICC-01/04-02/06-426-Conf-AnxB-Red.

²⁰ ICC-01/04-02/06-426-Conf-Exp, para.6, with confidential redacted version at ICC-01/04-02/06-426-Conf-Red, para.6; ICC-01/04-02/06-426-Conf-Exp-AnxD.

²¹ ICC-01/04-02/06-411-AnxA ("Redaction Protocol").

additional three documents relevant to witness P-0758²² to which it applied “non-standard” redactions in line with those authorised by the Single Judge.

Prosecution’s Submissions

A. Request for delayed disclosure

13. The Prosecution seeks to delay the disclosure of the identity and identifying information of P-0758, P-0761, P-0773, P-0806 for a short time until [REDACTED] in relation to these witnesses, and of P-0887, P-0888, P-0898, P-0901, P-0907, P-0911, P-0914 and P-0918 for a short time until [REDACTED]. Based on the [REDACTED], it is estimated that this process can be completed by 16 March 2015 in relation to P-0758, P-0761, P-0773, and P-0806, and by 30 April 2015 in relation to the other witnesses.

14. Should the Request be granted, the Prosecution will disclose the relevant material as soon as the [REDACTED].

15. According to the consistent jurisprudence of this Court, in order to justify such a request, the Prosecution must show that: (i) there is an objectively justifiable risk to the safety of the witnesses concerned arising from the disclosure of particular information to the Accused; (ii) no lesser restrictive measures are feasible; and (iii) the delayed disclosure will not unduly prejudice the Accused’s fair trial rights.²³

16. The relief sought by the Prosecution has previously been granted by Trial Chambers of this Court. [REDACTED],²⁴ [REDACTED].²⁵ Trial Chamber II in *Katanga*,²⁶ and [REDACTED]²⁷ also granted Prosecution requests for the delayed disclosure of the identity of certain witnesses.

²² DRC-OTP-2078-2255, DRC-OTP-2067-2084, and DRC-OTP-2067-2374.

²³ See ICC-01/04-01/07-1179-tENG (translation of ICC-01/04-01/07-1179), para.44 (“*Katanga* Decision”); ICC-01/09-02/11-580-Conf-Red, para.31; ICC-01/04-01/07-475, para.71; ICC-01/09-02/11-495, para.11.

²⁴ ICC-01/09-02/11-580-Conf-Red, paras.37, 44, and p.22 (“*Kenya* Decision”).

²⁵ *Kenya* Decision, para.37.

²⁶ *Katanga* Decision, paras.47-48.

²⁷ ICC-01/09-01/11-1273-Conf-Exp, p.7; ICC-01/09-01/11-1311-Conf-Exp, p.7.

17. The *ad hoc* Tribunals have permitted delayed disclosure to mitigate witness security issues on several occasions. At the ICTY, unredacted witness materials were generally required to be disclosed 30 days before trial,²⁸ although some Chambers permitted witness identity to be withheld until 30 days before testimony.²⁹ The ICTY Appeals Chamber upheld such protective measures.³⁰ The *Milošević* Chamber went even further, authorising delayed disclosure of witness identities to the accused until 10 days before testimony.³¹ The ICTR took a similar approach, permitting the “rolling” disclosure of witness identities with deadlines between 35³² and 21³³ days before testimony.

Delayed disclosure is justified in the instant case

18. For the reasons set out below, delayed disclosure of the identity and identifying information of these 12 witnesses is justified. Further justification for the requested delayed disclosure is set out in Confidential, *EX PARTE*, Annex A, which contains individual witness security assessments for 11 of the witnesses;³⁴ Confidential, *EX PARTE*, Annexes B1-B3, which contain the proposed “non-standard” redactions to material relevant to witnesses P-0887, P-0888, and P-0898;³⁵

²⁸ *Prosecutor v Delić*, IT-04-83-PT, Decision on the Prosecution Motion for Protective Measures, 1 December 2006, p.6.

²⁹ *Prosecutor v Brđanin*, IT-99-36-PT, Decision on the Prosecution’s Twelfth Motion for Protective Measures for Victims and Witnesses, 12 December 2002, p.6 (“*Brđanin* Decision”).

³⁰ *Prosecutor v Šešelj*, IT-03-67-AR73.6, Decision on Vojislav Šešelj’s appeal against the Trial Chamber’s oral decision of 7 November 2007, 24 January 2008, para.15.

³¹ *Prosecutor v Milošević*, IT-02-54-T, First decision on Prosecution Motion for Protective Measures for Sensitive Source Witnesses, 3 May 2002, para.13.

³² *Prosecutor v. Bagosora*, ICTR-98-41-I, Decision and Scheduling Order on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses, 5 December 2001 (“*Bagosora et al. Decision*”), para.24.

³³ *Prosecutor v. Renzaho*, ICTR-97-31-I, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 17 August 2005, para.16; *Prosecutor v Kabiligi et*, ICTR-97-34-I, Decision on the Motion by the Office of the Prosecutor for Orders for Protective Measures for Victims and Witnesses, 19 May 2000, p.5; *Prosecutor v Niyitegeka*, ICTR-96-14-I, Decision on the Prosecutor’s Motion for Protective Measures for Witnesses, 12 July 2000, para.16.

³⁴ The Prosecution will provide a detailed individual witness security assessment for P-0918 when this witness’ statement is complete. See para. 33 below.

³⁵ Each chart identifies: (i) the documents for which redactions are sought, (ii) the category of information to which the redactions pertain, (iii) the proposed redactions, and (iv) the justification for the redactions. Each of the documents in respect of which non-standard redactions are proposed are also provided in Confidential, *EX PARTE* Annexes B1-B3 in a format which permits the Chamber to view the information that the Prosecution proposes to redact (“proof version”). The proof versions show both the standard redaction applied by the Prosecution, as well as the non-standard redactions proposed. Only the non-standard redactions are included in the corresponding charts.

and Confidential, *EX PARTE*, Annexes C1-C3, which contain material relevant to [REDACTED].

(i) There is an objectively justifiable risk to the witnesses' safety arising from the disclosure of particular information to the Accused

19. There is an objectively justifiable risk to the safety of all 12 witnesses arising from the disclosure of their identity to the Accused prior to the completion of security assessments and implementation of protective measures. This risk is due to their positions as former child soldiers and military "insider" witnesses ([REDACTED]) and to the incriminating nature of their evidence, which creates a powerful incentive to interfere with them with the aim of dissuading them from testifying.³⁶ [REDACTED], add to the risk to the witnesses' safety arising from the disclosure of particular information to the Accused.

Instances of alleged interference

20. In its 8 December 2014 Decision, the Chamber noted that "[REDACTED]"³⁷ The Chamber also stated that "[REDACTED]," acknowledging that the [REDACTED].³⁸

21. [REDACTED].³⁹

22. [REDACTED].⁴⁰

23. [REDACTED].

Witnesses P-0758, P-0761, P-0773 and P-0806

³⁶ The ICTR has approved delayed disclosure based, *inter alia*, on the risk that the witnesses would "become targets for coercion or other threats which would prevent or at least discourage them from testifying at trial", *Bagosora et al.* Decision, para 20.

³⁷ 8 December 2014 Decision, para.49.

³⁸ 8 December 2014 Decision, para.49.

³⁹ Confidential, *EX PARTE*, Annex C1 contains two witness statements (DRC-OTP-2079-0245 and DRC-OTP-2079-0252) and two investigation notes (DRC-OTP-2079-0399 and DRC-OTP-2079-0401) detailing these events.

⁴⁰ Confidential, *EX PARTE*, Annex C2 contains two witness statements (DRC-OTP-2079-0329 and DRC-OTP-2079-1102) detailing these events.

24. P-0758 is a former UPC child soldier who was sexually enslaved and repeatedly raped by UPC/FPLC soldiers. She was trained by the UPC/FPLC and fought in several battles against the Lendu. P-0761, [REDACTED], is P-0758's [REDACTED]. P-0773, [REDACTED], is P-0758's [REDACTED]. P-0806, [REDACTED], is P-0758's [REDACTED]. These three witnesses provide information corroborating P-0758's evidence.

25. In addition to being a victim of a number of the crimes charged, P-0758 is also an "insider" witness as she is able to provide information on the inner functioning of the UPC/FPLC, having experienced this first-hand. The fact that P-0758 was also a child soldier may also make her subject to heightened interest by those attempting to dissuade co-operation with the Prosecution in this case.

26. Further, as noted in Confidential, *EX PARTE*, Annex A, [REDACTED].

27. The jurisprudence of this Court indicates that the subjective fear of a witness is relevant in considering whether an objectively justifiable risk exists, even though it is not, in itself, determinative.⁴¹

28. The Prosecution included P-0758, P-0761, P-0773 and P-0806 in its 15 January 2015 provisional list of witnesses⁴² and relied upon them during the confirmation hearing in February 2014. [REDACTED]. Therefore, the Prosecution requests that the Chamber authorise that the "non-standard" redactions applied to the statements and other materials of these witnesses be maintained until this time.

Witness P-0888

29. P-0888 is a former UPC/FPLC child soldier who was abducted in 2002 at the age of 14 by the UPC/FPLC in [REDACTED], trained at the [REDACTED], and participated in UPC/FPLC attacks. [REDACTED]. [REDACTED] provides insider evidence relevant to a number of crimes and modes of liability, in particular

⁴¹ *Kenyatta* Decision, para.31.

⁴² ICC-01/04-02/06-426-Conf-Exp-AnxA.

regarding the orders and other actions of the Accused. As a former UPC/FPLC child soldier and an “insider” witness [REDACTED], P-0888 is vulnerable [REDACTED].

30. The Prosecution completed its interview with P-0888 [REDACTED]. The Prosecution requests that the Chamber authorise the proposed “non-standard” redactions to this witness’ materials, as set out in Confidential, *EX PARTE*, Annex B1, and that these redactions be maintained until [REDACTED].

Witnesses P-0898, P-0914 and P-0918

31. P-0898 is a former UPC/FPLC child soldier who provides incriminating evidence against the Accused in relation to a number of the charges, including the conscription, enlistment and use of child soldiers, and the destruction of property. P-0914 is P-0898’s [REDACTED] and P-0918 is [REDACTED], and as such provide evidence linked to, and identifying, P-0898. As a former UPC/FPLC child soldier and an “insider” witness, P-0898 is vulnerable to targeting by those seeking to dissuade Prosecution witnesses from co-operating. P-0914 and P-0918 may also be targeted since P-0898 [REDACTED].

32. The Prosecution completed its interview with P-0898 on [REDACTED]. The Prosecution requests that the Chamber authorise the proposed “non-standard” redactions to the material relevant to this witness, as set out in Confidential, *EX PARTE*, Annex B2, and that these redactions be maintained [REDACTED].

33. P-0914’s witness statement was finalised on [REDACTED]. The Prosecution therefore requires time to provide the Chamber with proposed “non-standard” redactions to this statement. P-0918’s statement is [REDACTED]. Accordingly, the Prosecution requests that the Chamber authorise the non-disclosure of all material related to P-0914 and P-0918 until it is able to submit a request for the necessary “non-standard” redactions by 25 February 2015 and that, if approved, these redactions be maintained until [REDACTED].

Witness P-0901

34. P-0901 [REDACTED]. [REDACTED] also provides information regarding the conscription, enlistment and use of child soldiers and other crimes as well as on the Accused's position of authority and his direct perpetration of crimes.

35. The Prosecution completed its article 55(2) interview with P-0901 on [REDACTED]. The process of transcribing P-0901's audio-recorded interview is nearly complete. Until such time as there is a written transcript of this interview, the Prosecution is unable to identify to the Chamber the "non-standard" redactions it will seek. Accordingly, the Prosecution requests that the Chamber authorise the non-disclosure of all material related to P-0901 until it is able to submit a request for the necessary "non-standard" redactions by 25 February 2015 and that, if approved, these redactions be maintained until the VWU implements any necessary protective measures in [REDACTED] regard.

36. In particular, the Prosecution requests the Chamber to authorise the non-disclosure of the audio recordings of the article 55(2) interview with P-0901 before the necessary protective measures are in place [REDACTED].

Witness P-0911

37. P-0911 is a former UPC/FPLC soldier who took part in various UPC/FPLC operations and can provide evidence relevant to a number of charges against the Accused. As such, [REDACTED].

38. The lead and contact information for this witness was provided by [REDACTED] during that witness' interview [REDACTED]. The Prosecution suspended its article 55(2) interview with P-0911 on [REDACTED]. The process of transcribing the audio recorded interview has not yet been completed. Accordingly, the Prosecution requests that the Chamber authorise the non-disclosure of all material related to P-0911 [REDACTED].

39. In particular, the Prosecution requests the Chamber to authorise the non-disclosure of the audio recordings of the article 55(2) interview with P-0911 in its entirety before the necessary protective measures are in place since [REDACTED].

Witness P-0887

40. P-0887 [REDACTED] P-0887 obtained knowledge of the rape of civilians and child soldiers, and saw child soldiers being trained. P-0887 was also raped at gunpoint by [REDACTED] UPC/FPLC soldier. [REDACTED], P-0887 is vulnerable [REDACTED].

41. The Prosecution completed its interview with P-0887 on [REDACTED]. The Prosecution requests that the Chamber authorise the proposed “non-standard redactions” to the material relevant to P-0887, as set out in Confidential, *EX PARTE*, Annex B3, and that these redactions be maintained [REDACTED].

Witness P-0907

42. P-0907, a former UPC soldier [REDACTED].⁴³

43. The Prosecution started its article 55(2) interview with P-0907 on [REDACTED].

44. The Prosecution requests that the Chamber authorise the non-disclosure of all material related to P-0907 [REDACTED]. In particular, the Prosecution requests the Chamber to authorise the non-disclosure of the audio recordings of the article 55(2) interview with P-0907 in its entirety before the necessary protective measures are in place since [REDACTED].

(ii) No lesser restrictive measures are feasible

45. The Prosecution is obliged to take appropriate measures to ensure due regard for the protection of the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.⁴⁴

⁴³ Confidential, *EX PARTE*, Annex C3 contains an investigator’s note (DRC-OTP-2079-0387) detailing these events.

46. Disclosure of the witnesses' identity to the Accused should not occur until protective measures are in place for these witnesses. The security risks to the 12 witnesses stem from the Accused and his network of supporters [REDACTED].

47. It is well-established that "the greater the length of time between the disclosure of the identity of a witness and the time when the witness is to give evidence, the greater the potential for interference with that witness."⁴⁵ The proposed delay in disclosing the witnesses' identities will ensure that they are exposed for a shorter period and [REDACTED].

(iii) Delayed disclosure will not unduly prejudice the Accused's fair trial rights

48. Any disadvantage to the Accused stemming from delayed disclosure is outweighed by the Court's obligation to take appropriate measures to ensure due regard for the protection of the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.⁴⁶ Indeed, the Appeals Chamber has held that "to ensure, as a matter of the highest priority, that witnesses are appropriately protected [...] is, pursuant to article 68 of the Statute, a responsibility of the Court as a whole."⁴⁷

49. The Accused has already been provided with the material relevant to witnesses P-0758, P-0761, P-0773 and P-0806 with limited redactions to their identity. Therefore, the Accused knows the areas to which their testimony relates. The same applies to witnesses P-0887, P-0888, P-0898 and P-0901⁴⁸ whose material will be disclosed by 2 March 2015 with "non-standard" redactions should the Chamber

⁴⁴ Article 68(1) of the Statute.

⁴⁵ *Brđanin* Decision, para.15, also noting that "once the Defence commences (quite properly) to investigate the background of the witness whose identity has been disclosed to them, there is a risk that those to whom the Defence have spoken may reveal to others the identity of that witness, with the consequential risk that the witness will be interfered with"; *Prosecutor v Brđanin and Talić*, IT-99-36-PT, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para. 24; *See also Bagosora et al.* Decision, para.20.

⁴⁶ Article 68(1) of the Statute; *See also* articles 64(2) and (6)(e) of the Statute; ICC-01/04-01/07-776, paras.80, 95.

⁴⁷ ICC-01/04-01/07-776, para.101.

⁴⁸ The Prosecution proposes filing a request for "non-standard" redactions in relation to this witness' materials by 25 February 2015.

grant the Request for delayed disclosure with respect to them. Summaries of the expected testimony of these witnesses, and of witnesses P-0907, P-0911, P-0914 and P-0918 will also be provided on 2 March 2015, redacting only identifying information should the Request be granted.

50. The Prosecution expects that, based [REDACTED], the delay required in respect of each of the 12 witnesses will be short. The Prosecution also undertakes to provide disclosure [REDACTED]. This guarantees that the “non-standard” redactions are applied only for as long as circumstances warrant.

51. The fact that the Prosecution is seeking delayed disclosure for a limited number of witnesses on whom it will rely on at trial also lessens any prejudice to the Accused. The Prosecution recognises the potential impact of delayed disclosure on Defence preparation and is making such an application only for individuals for whom such relief is strictly necessary.

52. In *Katanga*, Trial Chamber II considered that “the Defence’s right to have evidence disclosed – essential as this may be – cannot be considered to be absolute. Where the protection of victims and witnesses is at stake, the Chamber must seek a solution which strikes a fair balance between the equally legitimate rights of the accused, on the one hand, and of the victims and witnesses on the other.”⁴⁹

B. Regulation 35 requests in the alternative

53. Should the Chamber decline to grant the Request in relation to witnesses P-0907 and P-0911, the Prosecution requests a variation of the time limit from 2 March 2015 to disclose the audio recordings, transcriptions and translations of P-0907 and P-0911’s article 55(2) interviews until they are completed and the Prosecution has implemented the necessary standard redactions. The Prosecution estimates that disclosure could take place by the end of April 2015.

⁴⁹ *Katanga* Decision, para.31; See also *Katanga* Decision, para.32.

54. Should the Chamber decline to grant the Request for delayed disclosure in relation to P-0901, the Prosecution requests, in the alternative, that it be authorised to disclose the Kinyarwanda translation of this witness' article 55(2) statement when this is completed, estimated to be on or before 16 March 2015.

55. Although the audio recordings for these interviews will be in the Prosecution's possession by 2 March 2015, the Prosecution requires that the corresponding transcripts are also complete before it can apply the necessary redactions, both standard and non-standard, to the audio.

56. Under regulation 35(2) of the RoC, a Chamber may extend time limits ordered by a Chamber or prescribed in the RoC "if good cause is shown".⁵⁰ There is good cause to vary the time limit in this case and the variation of the time limit as requested will not "derail the proceedings from their ordained course".⁵¹

⁵⁰ The Appeals Chamber has held that "[s]uch reasons as may found a good cause are necessarily associated with a party's duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations", ICC-01/04-01/06-834, para.7. The Appeals Chamber has further decided to extend a time limit where it was in the "interest of justice", ICC-01/04-01/10-505, para.11.

⁵¹ ICC-01/04-01/07-653, para. 6.

Conclusion

57. Based on the foregoing, the Prosecution requests the Chamber to grant its request for delayed disclosure or, in the alternative, its request for a variation of the disclosure deadline under regulation 35 of the RoC.



Fatou Bensouda,
Prosecutor

Dated this 17th day of February 2015

At The Hague, The Netherlands